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Adventures in Moral Consistency: How to Develop an Abortion Ethic through an Animal Rights Framework

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The question of whether there is a connection between the moral discussions regarding animal rights and abortion has been the subject of on-going debate in both the academic literature and general public discourse.[[1]](#footnote-1) Singer (2011) accuses self-proclaimed “pro-life” advocates of hypocrisy for regularly dining on the flesh of animals while claiming to promote “life.” He enjoins anti-abortionists to give the fetus the same moral standing as they would a nonhuman animal at a similar level of “rationality, self-consciousness, awareness, capacity to feel, and so on” (Singer 2011, 136). Theologians like Scully (2013, 2013\*) and Camosy (2013) acknowledge this demand for moral consistency and, as a result, endorse an animal liberation ethic in light of the principles of non-violence and respect for life, which support their conservative, anti-abortion ethic. In this same spirit, Black (2003) defends what he refers to as a homological view, which draws attention to the commonalities between the right to life and animal rights movements.

While some ethicists and theologians agree that a pro-life ethic implies an animal liberation ethic, others, such as Blackwood (1993), Noonan (1981), Murti (1995, 2006), Hill (1998), and Dinshah (1982), encourage animal liberationists to acknowledge that the principles that govern the animal rights movement have implications for the moral issue of abortion and that it is inconsistent for animal liberationists to promote an ethic for animals while failing to recognize the inherent value of fetuses.[[2]](#footnote-2) The underlying assumption, then, is that a theory of animal rights seems to be at odds with a permissive abortion ethic (Hill 1998; Jenni 1994; and Kao 2005).

In response to the claim that a liberal abortion policy is at odds with a theory of animal rights, Francione (1995) argues that the principles used in the animal rights discourse do not have implications for the abortion debate. First, he claims that neither of the two dominant approaches in animal ethics (Regan’s deontological approach or Singer’s utilitarian approach) imply that a fetus has a right to life. Second, Francione maintains that even if a fetus is granted a right to life on the same grounds as animals, this does not imply that the animal rights position has normative implications for abortion itself. His argument is that, while the state can protect the interests of animals without violating the privacy of the animal-exploiter, the state cannot protect the fetus without invading the privacy of the woman. Francione thus concludes that animal exploitation and abortion present different moral issues and that there is no hope of developing an anti-abortion ethic by referring to the animal rights discussion. As he puts it, abortion and animal rights are not comparable issues, thus our “moral theories of animal protection do not commit us to reject abortion on the same grounds” (Francione 1995, 151).[[3]](#footnote-3)

While Francione might successfully illustrate that animal rights and abortion present different legal issues and that the ethical-social policies should be different for animal rights and abortion, he fails to substantiate his claim that abortion and animal rights “present different moral dilemmas” (Francione 1995, 157).[[4]](#footnote-4) In this article, I challenge Francione’s claim that an animal rights framework cannot address the moral issue of abortion by illustrating how his own animal rights position can be used to develop a consistent ethic regarding abortion. I first illustrate that Francione’s animal rights position, which grounds moral consideration in sentience, is committed to the claim that a sentient fetus has a right to life. After demonstrating that Francione’s animal rights position must grant a right to life to a sentient fetus, I then consider whether an animal rights position has implications for the moral issue of abortion itself. In considering this question, I further develop Francione’s account of animal rights by employing Palmer’s (2010, 2011) relational approach to animal assistance, which maintains that humans have assistance-generating relationships to certain animals whom they have made (or created to be) dependent and vulnerable through their voluntary actions and institutional arrangements. Since a fully developed animal rights position morally obligates humans to assist animals who are caused to be dependent and vulnerable because of their voluntary actions and omissions, a morally consistent animal ethic is committed to the following claim: a woman is morally responsible for assisting a sentient fetus when her voluntary acts or omissions cause the fetus to be dependent and vulnerable.[[5]](#footnote-5) From these considerations, it will become evident that a fully developed and consistent animal rights ethic has implications for the moral issue of abortion.

1. **Does a Fetus have Moral Status?**

To say that a being has moral status or considerability is to say that we “may not treat it just in any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or well-being” (Warren 1997, 3). One of the preliminary concerns in ethical discussions, then, is determining which sorts of beings have moral status. What are the keystone capacities, capabilities or attributes that bestow moral considerability and which beings possess these capacities, capabilities, or attributes that are necessary for moral status (Palmer 2010)?

An anti-abortion position must first demonstrate that a fetus has a special ontological status because it possesses the said relevant capacities, capabilities, or attributes necessary for moral status. Standard anti-abortion positions maintain that a fetus has moral status because it possesses the relevant criterion for moral consideration: personhood (Schwarz 1990), membership in the species Homo sapiens (Noonan 1970; Ramsey 1968; Wertheimer 1974; Wreen 1984; Wolf-Devine and Devine 2009), potential for personhood (Feinberg 1984; Wilkins 1993), or having a future like ours (Marquis 1989).[[6]](#footnote-6) Although, as Goodpaster (1978) points out, to say that a being has moral considerablity or status is not to say that the being has rights, most anti-abortion arguments typically assume that if a fetus is said to be morally considerable, this then implies that it has rights (at the very least, the right to life), and thus abortion (in most cases) is argued to be impermissible because it is assumed that it violates the rights of the fetus.

In considering whether a morally consistent animal rights position necessitates an antiabortion position, the first question to be addressed pertains to moral status: can an animal rights theory grant the same ontological or moral status to the fetus as it does to an animal? To answer this question in a morally consistent fashion, we must first consider what capacity, capability, or attribute is said to grant animals moral status, and then we must ask whether a fetus possesses this same capacity, capability, or attribute. In other words, the moral considerability of a fetus must be grounded in the very characteristic that is said to entitle animals to moral consideration: sentience, i.e. the capacity to experience pain and suffering. Thus, in determining what conclusions we might draw regarding abortion from applying the principles of an animal rights position, we will leave behind traditional anti-abortion arguments that emphasize the notions of personhood, species membership, potential personhood, or having a future like ours and, instead, assume that a fetus has moral status only if it is sentient.

1. **Moral Consideration, Sentience, and the Right to Life**

The dominant approach to moral status in animal ethics, and that is held by Francione, is that sentience is the vital characteristic which entitles a being to direct moral consideration (Singer 1975, 2011; Francione 2000, 2006, 2009, 2010; Rollin 1981; Steiner 2008; Warren 1987, 1997, 2001; Palmer 2010, 2011; Sapontzis 1987; DeGrazia 1996).7 A sentient being, i.e., a being with the capacity to suffer or experience pain, refers to a conscious being: a being who is subjectively aware and has phenomenal experiences and some level of perceptual awareness.

What is morally special about a sentient being is that it has interests; it has desires, wants, and preferences. Furthermore, since a sentient being is subjectively aware, it can experience or feel frustration or satisfaction of its interests. On the other hand, nonsentient things (i.e., things which are not conscious), like rocks, are not subjectively aware, and thus they do not have interests; they have no desires, wants, or preferences. If a being does not have interests, then it does not merit direct moral concern because it cannot experience frustration or satisfaction (DeGrazia 1996, 3).[[7]](#footnote-7) The experience of frustration or satisfaction, then, is what most animal ethicists believe to be of moral significance.

According to both Francione (2000, xxiii) and Singer (2011, 50), if a being has an interest, such as an interest in not suffering, there is no moral justification for not taking that being’s interest into consideration (Singer 2011, 50 and Francione 2000, xxiii). Since sentient nonhuman animals are conscious and thus can have subjective experiences of pain and suffering, they have at least one interest: the interest in not suffering. Thus, both Francione (2000) and Singer (1975, 2011) maintain that if we are to take animal interests seriously, we must apply the principle of equal consideration to animals, which requires that we treat “likes alike”; we must treat similar interests in similar ways (Francione 2000, xxv). This is to say that if both an animal and human have the same interest, such as the interest in not suffering, we should give equal consideration to their interests and treat these interests in a similar way.

Francione argues that if we are to apply the principle of equal consideration to animals, then we must protect their interests with rights, which are often described as “moral notions that grow out of respect for the individual. They build protective fences around the individual by establishing “areas where the individual is entitled to be protected against the state and the majority even when a price is paid by the general welfare” (Rollin 1983, 106). Francione points out that, currently, we surround the interests of humans with “protective fences,” yet the interests of animals go unprotected because they are denied the right not to be used as property. Yet, as Francione points out, if sentience is the criterion of moral considerability, then there is no morally relevant difference between members of the species Homo sapiens and sentient animals that would justify refusing to protect the interests of sentient animals with rights, while at the same time protecting the interests of humans with rights (Francione 2004, 40). As he argues, “there is no characteristic or set of characteristics that is possessed by all humans that is not possessed by at least some animals”; whatever attribute we claim makes human beings deserving of rights is shared by some animal (Francione 2003, 9). The only difference between human and sentient animals is species, yet, as Francione (2000,xxix) argues, species membership does not justify us in treating animals as property any more than race justifies us in using blacks as slaves.[[8]](#footnote-8) Francione thus concludes that “we must extend to animals the one basic right that we extend to all human beings: the right not to be treated as things” (Francione 2000, xxix). This right not to be treated as property is said to be the grounding for all other rights, such as the prima facie right not to be caused harm or the prima facie right not to be killed; it is said to be the “precondition for the possession of morally significant interests” (Francione 2008, 50).

The fundamental claim, then, of Francione’s philosophy of animal rights is the following: sentience not only entitles a being to full membership into the moral community, but sentience is also the necessary and sufficient condition for possessing rights (Francione 2000, xxxiii). [[9]](#footnote-9) I will refer to this position as a sentience-based rights approach, which grants that all sentient beings have equal moral worth and are thus entitled to equal moral rights.[[10]](#footnote-10) This is an egalitarian account of morality, meaning that “sentience alone…suffices for moral significance,” and one does not receive extra moral protection or “stronger” rights just because she has advanced cognitive capacities (Francione 2000, xxxiiii).

Note that Francione does not claim that the rights of animals can *never* be justifiably overridden by other appropriate moral considerations. Rather, he grants that “the fact that animals may have certain rights does not mean that those rights will always trump other rights that may be held by humans or other nonhumans” (Francione 1995, 10).

As it is pointed out by most rights theorists, including Francione, beings who possess rights can have their rights trumped if they pose a threat or danger to another’s life or basic interests (Nozick 1974; Thomson 1986; Francione 2000). Although we have a duty to respect a being’s right to life, we also have a right to preserve our own lives. Thus, in cases of genuine conflict, one may override the duty to respect the lives of others in order to preserve one’s own life. A right, then, is prima facie, as opposed to absolute, meaning that: (1) “Consideration of this right is always a morally relevant consideration, (2) anyone who would harm another, or allow others to do so, must be able to justify doing so by, (a) appealing to other valid moral principles and by (b) showing that these principles morally outweigh the right not to be harmed in a given case” (Regan 1983, 287).[[11]](#footnote-11)

An animal rights approach that attributes prima facie rights to animals on the basis of sentience, like Francione’s, advances two fundamental claims that can be used to develop an abortion ethic: (1) all sentient animals have moral status, and (2) having moral status entails that a being has a prima facie right to life. To make this clear, consider the following argument that summarizes Francione’s animal rights position:

1. If a being is sentient, then it is the bearer of prima facie rights, including the prima facie right to life.
2. Certain animals are sentient.

Therefore, certain animals are bearers of rights, including the prima facie right to life.

Yet, if a sentience-based animal rights theory is to remain morally consistent, it is committed to using the same line of reasoning in the case of sentient fetuses. Thus, Francione’s theory is committed to the following argument:

1. If a being is sentient, then it is the bearer of rights, including the prima facie right to life.
2. Certain fetuses are sentient.

Therefore, certain (sentient) fetuses are bearers of rights, including the prima facie right to life.

**3 Sentience and the Fetus**

In considering what implications Francione’s animal rights theory has for the abortion discussion, we must first consider the fundamental question of whether or not a fetus has the same moral status of an animal: is it sentient in the sense that it has the capacity to feel pain? The question, then, is whether, and furthermore, when, a fetus is sentient in the sense that it is conscious. When can it feel, perceive, and have subjective experiences?

Although Francione (1995) admits that second- and third-trimester fetuses are probably sentient, he argues that it is unlikely that fetuses are sentient in the first trimester. In support of this claim, he refers to the medical research on fetal development, which focuses primarily on the neurological development of the fetus. The consensus of the medical community is that the fetus does not acquire the ability to experience pleasure and pain until sometime between 20 and 32 weeks of gestation (Grobstein 1988, Anand & Hickey 1987; Burgess & Tawia 1996; Mellor et al. 2005; Lee et al. 2005; Morowitz and Trefil 1992).[[12]](#footnote-12) According to these views, formations of the structures necessary for consciousness are not apparent until later prenatal development when synaptic connections with the brain are developed (Bortolotti & Harris 2005; Boonin 2003). Specifically, neuroscientists conclude that consciousness requires the following structures: spinal cord, cranial nerves, thalamus, and prefrontal cortex. In addition, the connections (synapses) among these structures must be developed. Consciousness, then, is linked to “organized cortical brain activity in the cerebral cortex of the sort that produces recognizable EEG readings” (Boonin 2003, 115). Since there is little evidence that a fetus younger than 20 weeks has a functioning brain with organized electrical activity in the cerebral cortex (which requires synaptic connectivity and a developed cerebral cortical structure), it is said to lack consciousness, and thus it is assumed to be unable to experience pain.[[13]](#footnote-13)

While Francione appeals to the dominant opinion in the neuroscience community (that a functioning cerebral cortex, thalamus, and synapses are necessary for sentience) in determining when a fetus becomes sentient, he does not consistently apply this dominant view in neuroscience to his discussion of animal sentience. For example, although neuroscientists like Rose (2002) report that fish do not have conscious awareness of pain because they do not have a developed cortex, Francione continues to include fish in the moral community.[[14]](#footnote-14) Furthermore, he maintains that other sea animals, such as lobster and cephalopods (like octopus and squid), are “clearly sentient,” even though these animals do not have a neocortex, which the neuroscience community, in its findings regarding fetal development, claims is necessary for sentience (Francione 2013, 66).

When pressed why animals without a neocortex, like fish and lobster, should be characterized as sentient, most animal ethicists, Francione included, respond by pointing to the fact that these animals behave as if they are sentient when they are subjected to noxious stimuli (Francione 2000, 6; Singer 2010; Braithwaite 2010). This illustrates that animal ethicists, like Francione, do not always rely on the dominant neurological evidence in discussions about the consciousness of animals like fish, lobster, and cephalopods. Instead, they place significant importance on “every-day practices” of relating to, observing, and responding to beings that appear to be sentient. In other words, they rely on “ordinary practices” when ascribing pain to animals (Jamieson 2002, 54-70; Gaita 2002, 44; Searle 1998, 49). So, if we see a dog lying injured in the road, yelping and crying out with dilated eyes and shortened breath, we just “know” that it is in pain; we don’t need to refer to neuroscience to confirm this conclusion (Gaita 2002). Rather, it is suggested that we can attribute sentience to animals if they exhibit pain behavior when they are in situations that would cause humans pain (Palmer 2010, 12).

Yet, pointing to the mere pain behavior of animals is not enough to establish that they are sentient, since plants, which are not sentient, also react to noxious stimuli. There must, then, be another criterion of pain in addition to mere reaction to noxious stimuli. This is where animal ethicists, like Francione and Singer, deploy the notion of “sufficient similarity” to explain why they are justified in attributing sentience to animals like fish and lobster. Specifically, they claim that there are “sufficient similarities” observed between the brains of sea animals like fish and the brains of developed humans (or they might point to the “highly complex” nervous system of certain animals like cephalopods) (Francione 2000, 6).[[15]](#footnote-15) While Francione does not elaborate upon what it means for an animal to have a brain that is sufficiently similar to that of humans, he does indicate that having “neurological and physiological structures that we associate with sentience” is evidence for consciousness (Francione 1995, 6). This could be something as basic as having nociceptors (pain receptors) and a central nervous system, since this is what constitutes the basic neurological structure of fish and lobster (Rose 2002). We can only conclude, then, that Francione assumes that having a functioning brain with basic neurological structures (such as nociceptors and a central nervous system) that in some way resemble the brain of a fully developed human, is sufficient for sentience, despite how primitive the brain might be or despite that it might be missing one of the structures that is assumed to be necessary for consciousness in developed humans (such as the neocortex).

If we grant that certain animals are conscious in spite of the fact that they do not have a neurological structure that completely mirrors that of a developed human, moral consistency requires that we not dogmatically deny that a fetus is conscious simply because the neurological structure of its brain is not exactly the same as a fully developed human’s brain. Rather, in order to determine whether a fetus should be deemed sentient, Francione needs to rely on the same criteria of sentience he uses to justify his claim that fish and other sea animals are sentient: a basic brain structure that we normally associate with human sentience and pain behavior. That is, in order to come to a conclusion regarding fetal sentience that is consistent with his conclusion regarding fish and lobster sentience, Francione must consider whether the fetus: (1) has a brain that resembles the brain of a fully developed human in some basic way (in either complexity or basic neurological structure), and (2) reacts to noxious stimuli (i.e., exhibits pain behavior).

**3.1 Neurological Evidence**

There is a considerable amount of scientific research that indicates that a fetus of eight weeks gestation has a functioning brain, in a primitive form, that resembles that of a fully developed human (Grobstein 1988). Neuroanatomical research demonstrates that a fetus as young as eight weeks has the rudimentary developed central nervous system, such as the spinal cord, brainstem, basic structures of the diencephalon, and cerebral cortex at around eight weeks (Salihagić-Kadić and Predojevic 2012). Krason (1984) and Beckwith (2007) report that around the 18th day after conception, the central nervous system and brain of the fetus is considerably developed, and after eight weeks, all bodily systems are present in at least their rudimentary form.

Collins et al. (1984) report that a fetus as young as eight weeks has the following: (1) pain receptive nerve cells, (2) neural pathways, and (3) the thalamus. Bortolotti likewise points out that “the earliest possible time at which embryos might be able to perceive pain sensations is set at around the eighth week of gestation,” after which the sensory nerves that convey the message of pain to the brain, the thalamus that receives this message, and the motor nerves that transmit the message of pain to the site of the pain stimulus can be developed (2005, 71). Korein (1997) provides a detailed account of fetal development, remarking that between three and four weeks, neurons develop in the spinal cord and brainstem. At five to six weeks, the diencephalon and cerebrum develop. Synapses between neurons form at the seventh week of gestation, after which the spinal cord and brain stem begin to function. Other neuroanatomical investigations into fetal development likewise provide reason to support the conclusion that first-trimester fetuses might be sentient as early as the eighth week of gestation since, at this point, the fetus possesses an active nervous system, and its brain generates electroencephalographic waves, which are discernible by an electroencephalogram (Brody 1975; Schaeffer and Koop 1979; Schwarz 1990; Allan 1969; Goldenring 1985; Flower 1985).

**3.2 The Fetus and Behavioral Evidence of Pain**

Not only does a fetus of eight weeks have a brain structure that resembles that of a fully developed human, a fetus of eight weeks responds to physical stimulation and noxious stimuli, such as needle stimulation (Gupta et al. 2008; Glover 2004; Myers et al. 2004; Derbyshire 2008; Salihagić-Kadić and Predojevic 2012; Grobstein 1988). These behavioral responses, paired with physiological responses, such as the stress hormones released by early term fetuses when subjected to noxious stimuli, should serve as evidence that fetuses of eight weeks gestation are sentient, if we accept that fish and lobster responses to noxious stimuli is evidence of fish and lobster sentience.

While Francione grants that the observed behavioral responses and basic physiological responses of a first-trimester fetus (a fetus of eight weeks) is evidence that it has unconscious states of pain, he maintains that, since a first-trimester fetus does not have a developed cerebral cortical structure, it is not sentient in the sense that it can experience pain.[[16]](#footnote-16) This is an inconsistent position to support if he grants that certain animals, like fish, are conscious, despite not having a cerebral cortical structure that is identical to that of a fully developed human’s. If the primitive brain structures of fish and lobster, together with their observed physical responses to noxious stimuli, indicate that these animals are sentient, the brain structures of a fetus of eight weeks, together with the observed fetal responses to noxious stimuli, should provide similar evidence of esentience. In keeping with Francione’s discussion regarding fish and lobster sentience, we should conclude that a fetus of eight weeks is sentient and thus has direct moral standing and a prima facie right to life.

1. **Animal and Fetus Rights: Erring on the Side of Caution?**

In addition to granting that certain animals without fully developed cerebral cortical structures are sentient based on how similar they are (neurologically, physiologically, and behaviorally) to fully developed humans, Francione even leaves open the possibility that insects are sentient. He writes that: “I err on the side of sentience and I do not intentionally kill them. Indeed, I exercise caution when I walk so as not to kill or injure them. I do not know whether clams or other mollusks are sentient although I err in favor of sentience and do not eat them or buy products made from them” (Francione 2000, 176). According to Francione (2013, 66), when we do not have conclusive evidence about the moral status of animals, we should err on the side of not killing, eating, or harming these beings. In granting animals, such as insects, the benefit of the doubt, Francione does not stand as an anomaly; this policy of erring on the side of caution is widely accepted throughout the animal rights community. For instance, Regan likewise gives the benefit of the doubt to animals who are not obviously subjects-of-a-life, arguing that it is better to “adopt a policy that errs on the side of caution when the cognition of moral rights is at issue” (Regan 1984, 320). In fact, Regan also recognizes that moral consistency demand that he does the same in the case of fetuses who might be subjects-of-a-life (Regan 1983, 319). The underlying claim, then, is that when there is evidence or a compelling reason to believe that a being is a right holder, we should give the benefit of the doubt to the being in question in order to ensure that we do not trample over its (potential) rights (Kornegay 2011; Schwarz 2012).

Although erring on the side of caution might have unsettling consequences in cases of moral conflict, recall that the aim of this article is to apply consistently the principles of an animal rights position to the abortion discussion.[[17]](#footnote-17) Thus, if animal ethicists err on the side of caution when attributing moral consideration to animals like insects and crustaceans, they should likewise do the same with fetuses when there is a plausible reason to believe that they have the capacity for conscious experience.[[18]](#footnote-18) Furthermore, moral consistency demands that we value the life of a being on the same scale as the lives of beings with similar characteristics. Thus, if we grant that fish, insects, crustaceans, and cephalopods have a right to life, then we should also grant that a fetus of eight weeks gestation, who has similar, and in some cases, even more advanced neurological, physiological, and behavioral characteristics, has a right to life.[[19]](#footnote-19)

1. **Justified Killing: Animals and Fetuses**

Although the sentience-based animal rights theory is committed to the view that a sentient fetus has a right to life, this conclusion does not, in and of itself, tell us anything meaningful about the permissibility of abortion. This is because there are two questions left to address, which are directly relevant to both the animal rights and abortion discussions: When is it acceptable to kill a being with a right to life? And when are we required to assist a being who has a right to life? In applying principles from the animal rights discourse to the abortion discussion, we will consider situations in which it is acceptable to kill an animal (which will help us to answer the question of when, if ever, is it acceptable to kill a fetus) and situations in which we are obligated to assist an animal (which will help us to answer the question of when, if ever, is a woman obligated to assist a fetus).

Let us begin by asking the following: under what circumstances, if any, is killing an animal morally permissible? As previously discussed, rights theorists like Francione maintain that the right to life of animals is prima facie, which means that this right can be infringed upon if a more pressing moral demand overrides the respective right. For instance, an animal might justifiably be deprived of its right to life if it presents a direct threat to us (Francione 2000, 158; Regan 1983, 331). As Francione points out, most moral theories permit us to defend ourselves (or others) from imminent harm presented by others (humans or nonhumans) in emergency or conflict situations. Thus, there may be times when it is permissible to kill an animal in an emergency situation in order to protect ourselves (or others), such as if a rabid dog is about to attack one of our friends (Francione 2000, 158-159).

By appealing to these cases of permissible killings, we can conclude that an abortion performed to preserve the life or health of the woman is morally permissible, according to the sentience-based animal rights theory. In such a scenario, the fetus would be characterized as an “innocent threat”: a being who does no wrong, yet seriously endangers another’s life (Nozick 1974; Thomson 1986). Although, we should refrain from using excessive force in protecting ourselves, an appeal to self-defense justifies the harming of an animal under certain conditions, which likewise would justify the killing of fetuses under similar conditions.

1. **Conflicting Rights and Abortion**

While a defense of therapeutic abortions can easily be made by drawing an analogy to the justified killing of animals who pose a direct threat to human life, we are left wondering whether Francione’s animal rights ethic can provide any moral guidance regarding situations in which the life of the woman is not threatened by the fetus. At first glance, it might seem that Francione’s account of animal rights is committed to the conclusion that all non-therapeutic abortions after eight weeks are morally impermissible because they seem to involve the unjust killing of a non-threatening sentient being, who has a right to life. On this view, an underlying assumption is that abortion violates the right to life of a fetus.

To say that a right is violated is to say that one performs an “unjustified and wrong action against an interest that is protected by a right” (Beauchamp 2011, 220). In claiming that the rights of the fetus are violated in abortion, the standard anti-abortionist presupposes that nontherapeutic abortions involve unjustified killing: the act of abortion allegedly denies, without adequate moral justification, a non-threatening sentient fetus something to which it is entitled.[[20]](#footnote-20) While the goal of preserving one’s life is an adequate justification for harming another being, anti-abortionists, such as Noonan (1970), argue that killing a fetus with a right to life can never be justified for non-therapeutic reasons.

In response to this argument, one might claim that even a non-therapeutic abortion is morally permissible because it involves a justified action that legitimately overrides (as opposed to violating) a being’s rights. As discussed earlier, the claim that rights are prima facie warrants the conclusion that an action is not automatically impermissible just because it might deny a being its rights, such as the right to life. Rather, an act that infringes upon one’s rights is permissible if the denied right is justifiably overridden by a weightier moral concern (Beauchamp 2011, 220). It might then be argued that abortion is permissible since, in having an abortion, a woman is said to justifiably exercise her rights to self-determination, self-ownership, bodily integrity, autonomy, privacy, and reproductive freedom, which allegedly override any rights the fetus might have (Bolton 1979; Rothbard 1982; Harrison 1983; McDonagh 1996; Warren 1973).

In defense of this argument, Francione argues that this is where the abortion discussion seemingly departs from the animal rights theory. The killing of a fetus, in the case of abortion, is justified because the woman’s rights are said to always prevail or override the rights of the fetus in cases of conflict. Yet, when we consider the issue of animal exploitation, we will find that there is no genuine conflict of rights, thus protecting the right of an animal is not in any way problematic. As he puts it, “the state can protect the animal’s interest without invading the privacy of the human in a manner that we would see as repulsive or as inimical to our basic liberties” (Francione 1995, 158). However, when it comes to abortion, the state cannot protect the interests of the fetus without invading a woman’s privacy and violating her basic liberties (Francione 1995, 158). The central claim, then, is that even if the fetus has a right to life, the right to life is said to be a prima facie right that can be overridden by competing claims, such as a woman’s right to autonomy, physical integrity, and privacy.

Even if a woman is entitled to exercise her rights to physical integrity, we are left with one lingering concern: a sentient fetus, too, has an equal right to its own physical integrity. How, then, can we justify the permanent loss of physical integrity when it comes to a sentient fetus, while at the same time finding it morally unacceptable to temporarily infringe upon the physical integrity of a woman? In answering this question, Francione claims that we are left with two options in cases of conflict: (1) one of the two parties involved in the conflict must make the decision, or (2) we must relegate the responsibility to a legal system dominated by actors and ideologies that are inherently sexist. Since the latter option is considerably problematic, we must opt for the former. Yet, since the fetus cannot speak for itself, Francione concludes that the woman is the only decision maker available, thus she should be permitted to override the rights of the fetus (Francione 1995, 156-157).

**6.1 A Possible Response: Flipping a Coin**

In responding to Francione’s suggested method of conflict-resolution, we should first note that his conclusion regarding abortion stems from legal considerations: legally, we must grant a woman the right to have an abortion, since any other option would result in the state continually “entering the body of the woman and dictating what she can and cannot do with her body and reproductive processes” (Francione 1995, 157). Francione goes on to note that, in a patriarchal society, a woman would never enjoy privacy over her reproductive systems if the “legitimacy of abortion is left to the political or legal systems” (Francione 1995, 157). Yet, even if we grant that, given the patriarchal nature of our legal system, a woman should have the legal right to resolve the conflict, we are left to decipher the morally correct course of action—and Francione does not provide a satisfactory answer regarding the moral aspect of this discussion.

If we assume that, morally speaking, we should resolve conflicts between rational and nonrational beings by always deferring to the party who is able to make decisions, then not only would the fetus always lose, but so, too, would the animal. Yet, this conclusion stands in direct opposition to Francione’s rights theory, which rejects the claim that we should resolve moral conflicts between humans and animals by always choosing to protect the interests of rational human beings simply because they are more capable of making decisions. Clearly, then, deferring to the “able decision maker” is not the morally preferable way to resolve moral conflicts between rational and non-rational beings, if we are to remain consistent with Francione’s theory of animal rights.

We might, then, look elsewhere in Francione’s writings for guidance regarding the morally appropriate way of resolving conflicts between a rational person and a merely conscious being like an animal. In looking to Francione’s discussion of genuine conflict between animals and humans, we find that, contrary to our common intuitions, morality does not always demand us to save the human. For instance, if we are in a burning house and are forced to choose between saving a human and an animal, we might very well be justified in saving the animal over the human, according to Francione (Francione 2000, xxxiii; Francione 2008, 14). In fact, Francione even suggests that we use a coin flip in order to determine who to save (Francione 2008, 14). Since a fully developed human and a sentient animal have equal moral value and each have an equal right to life, we are permitted to save either being in such circumstances, thus, on Francione’s view, a coin toss is a suitable way of determining who to save.

It might come as a surprise that Francione does not advise us to save the rational human being in the event of a fire, since other animal rights theorists, like Regan (1983), instruct us to save rational human beings over nonhuman animals in conflict scenarios. While Regan grants that all subjects-of-a-life have equal inherent value, he maintains that there are often differences in the value of lives, whereby lives that have the highest value are those that have more possible sources of satisfaction. Since rational beings can bring impartial reasons to bear on decision making, Regan maintains that they have an additional possible source of satisfaction that nonrational beings do not have, and, consequently, the lives of rational beings turn out to have greater value than the lives of non-rational beings (Regan 1983, 308).

Francione rejects Regan’s claim that there is a moral principle that informs us that a rational being ought to be saved over an animal in conflict scenarios. According to Francione, as long as both beings are sentient, both not only have equal moral value, but, as far as we know, the lives of both beings also have equal value, and thus we cannot assume that it is morally justified to give preference to beings with higher levels of cognitive sophistication in conflict situations. If we find ourselves continually attracted to Regan’s idea that we should save the rational human over an animal in conflict situations, this is perhaps because we identify with the rational human being more immediately. Francione claims that this is just a psychological explanation of our feelings and attitudes in response to human-animal conflicts; it is not a moral explanation. While we do in fact have a better idea of what death means for another human, Francione points out that this just speaks to the “epistemological limitation on our part and not any empirical claim that death is a lesser harm to humans” (Francione 2008, 227). Thus, to avoid giving special preference to beings “like us” in conflict situations, Francione suggests that we toss a coin in order to impartially and fairly decide whom to save.

**6.2 A Second Response: A Relational Account of Assistance**

If we apply Francione’s guidance concerning conflict scenarios to the abortion discussion, we might find that, in cases where a woman’s rights conflict with the rights of a sentient fetus, the morally correct action just might be to flip a coin in order to decide impartially and fairly whose rights to uphold.

While we might remain unsatisfied with Francione’s proposed coin-flip resolution, there remains a second possible way of resolving conflicts between humans and animals. On this view, animal rights theorists can, and ought to, say something on behalf of those without a voice by consistently applying a relational account of moral obligation to the discussion. In doing so, we will find that a complete animal ethic that requires humans to provide assistance to animals in certain situations, when consistently applied to the abortion discussion, likewise requires a woman to provide assistance to a sentient fetus under similar conditions.

Before considering under what conditions animals acquire rights to human assistance, let us pause to consider Thomson’s (1971) claim that in most situations of unwanted pregnancy, a fetus has not acquired the right to use a woman’s body.[[21]](#footnote-21) As she points out, even if we grant the fetus the right to life, this right is not “unproblematic”; “having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person‘s body–even if one needs it for life itself” (Thomson 1971, 136). As she argues, the fact that the fetus needs a woman’s body to survive does not then entail that it has a right to the woman’s body or that the woman has a duty to allow the fetus to use her body. If there is such a right to the use of another’s body, it is an acquired right that arises from special circumstances, which change what is owed to the fetus. For instance, if the woman “invites” the fetus in, the fetus acquires the right to use the woman’s body, and the woman, in some sense, acquires a duty to assist the fetus.

In employing an animal rights theory to determine, when, if ever, a woman acquires the duty to assist a fetus, I will first consider what conditions, if any, generate special duties of assistance in the case of animals. As Palmer notes, both Regan and Francione’s animal rights theories are primarily constructed in terms of unacquired negative duties of noninterference, which apply without regard to our voluntary acts. However, it is mentioned, usually in passing, that a rights theory must also take into account positive duties that are owed to certain animals in situations in which we have acted in a way such that they are in need of our care or assistance (Francione 2000, 154; Regan 1983, 282-283).

In expanding the standard theory of animal rights, which, as even Regan (2001, 51) admits, is incomplete, Palmer (2010, 2011) suggests an “add-on” to the traditional animal rights view that pays tribute to the moral relevance of causal relations, which she claims generate special duties of assistance. The claim, then, is that different contexts give rise to unique moral relationships, consequently changing what is owed to certain animals. In defense of a relational approach to animal ethics, Palmer (2010) begins with the laissez-faire intuition that while we should leave wild animals alone, we have special duties to care for and assist domesticated animals. In developing a relational approach that can account for this intuition, Palmer discusses a “no-contact” laissez-faire intuition (LFI), which involve the thoughts that:

1. We have prima facie duties not to harm animals.
2. There are normally no duties to assist wild-living animals (although we are permitted to do so).
3. We are often required to assist domesticated animals or other animals who are dependent or vulnerable because of our actions.

A relational approach, then, is manifested through the “no contact” LFI, which advances the following central claim: we (humans) have assistance-generating relationships when either: (1) we create sentient animals who are vulnerable and dependent or (2) when our voluntary actions cause animals to be in a particular context or situation in which they are vulnerable or dependent. Essentially, the claim is that humans “establish certain relations with animals that change what is owed to them” (Palmer 2011, 701). In particular, our “voluntary actions and institutional arrangements” create additional, nondiscretionary obligations toward those animals whom humans have caused, or created to be, dependent and vulnerable (Palmer 2011, 707).

Palmer notes that the primary example of such an arrangement is domestication (Palmer 2011, 707). Through domestication, humans shape and form the capacities of animals; their natures are shaped by us, and they are deliberately created to be vulnerable or dependent (Palmer 2011, 712). Since “humans have acted to create animals that are constituted such that they are unable to be independent,” animals are entitled to special protection, and thus humans acquire special duties to assist these beings (Palmer 2011, 715).

Now, one might argue that Palmer’s account of special relations has no bearing on the abortion discussion because there is a distinction between: (1) the way domesticated animals are caused to exist, and (2) the way a fetus is caused to exist. While humans have deliberately and intentionally created domesticated animals so that they are vulnerable and dependent on human beings, sentient fetuses are not intentionally created to be dependent and vulnerable. As one might argue, the status of the fetus is determined biologically, and there is nothing remotely voluntary about the dependency of the fetus.

Yet, humans can also come to have special obligations to animals whom we did not deliberately create to be dependent and vulnerable. We can also cause “wild” animals to be vulnerable and dependent by our actions. Palmer argues that humans can, and often do, create relations of vulnerability and dependency with wild animals who have “been deliberately and predictably made dependent, for instance by regular feeding” (Palmer 2011, 721). Palmer insists that we are responsible for our deliberate actions and practices that we foresee will make nonhuman animals dependent on us, regardless of the fact that we did not deliberately intend for them to depend on us. For example, Palmer argues that humans have created relationships of dependency with pigeons who were once regularly fed in Trafalgar Square in London. Since a deliberate human act, feeding pigeons, led to the foreseeable relationship of dependency, we assume obligations to assist these pigeons, even if we did not intend to make the pigeons vulnerable and dependent on humans (Palmer 2011, 721).

While these discussions pertain to the collective obligations we have, as humans, to animals, Palmer admits there are many situations in which “the context of responsibility is indeed narrower than ‘everyone’” (Palmer 2012, 719). That is, there are situations in which an individual must assist a particular animal(s) because of the unique role she, individually, played in making the animal(s) vulnerable and dependent. Consider the following: in its embryonic stage, I knock out the hunting, aggressive, and violent genes of a particular lion. Assume, then, that when this lion grows up, it is unable to live in the wild and fend for itself. It would seem, then, that I have a special obligation to provide food, shelter, veterinary care, and so forth to this lion, *because* I created it to be dependent and vulnerable.

In addition to the special obligation I have to an animal whose nature I personally manipulate, I might also be responsible for the dependency of some wild animal(s) whose nature I did not manipulate. Consider the following: each night, I throw my leftover food into my garden. I foresee that the squirrels who live in my backyard will, night after night, eat this food, thereby becoming dependent on me for food. Now, imagine that their continual reliance on me for food makes them forget how to find and store food, and as a result, they do not bury any nuts in preparation for the winter. It seems, then, that according to Palmer’s relational account, I have a special obligation to keep feeding these squirrels (especially in the winter when food is more scarce and the squirrels have not buried any nuts in preparation), since my deliberate and voluntary act of leaving food outside led to the foreseeable vulnerability and dependence of the squirrels. Note that, in this scenario, I did not create the squirrels to be dependent or vulnerable, nor did I shape their innate nature; the squirrels’ physical and psychological capacities are independent of me. Yet, given that squirrels exist with their own innate capacities, I still caused them to be vulnerable and dependent on me.

It seems, then, that there are two different situations in which one can be responsible for the fact that a being now stands in need of assistance: (1) when we create a being to be dependent, vulnerable, and in need of our assistance if it is to survive, and (2) when, given a being who already exists, we cause that individual to be dependent, vulnerable, and in need something if it is to continue to exist.[[22]](#footnote-22) In the above scenarios, the lion is created to be dependent and vulnerable, while the squirrels are caused to need something if they are to continue to exist, given they already exist. In both cases, I remain morally responsible for the dependence and vulnerability of the animals, since my voluntary actions either created or caused the animals to be dependent and vulnerable.

The circumstances regarding the squirrels, I argue, are analogous to certain circumstances regarding sentient fetuses. While we cannot say that a woman is responsible for the vulnerability and dependency of the fetus in the first sense, since a woman does not intentionally create the fetus to be dependent and vulnerable, we can illustrate that a woman is responsible for the vulnerability and dependency of a sentient fetus in the second sense. Given a fetus already exists, the woman causes it, at eight weeks gestation, to need something if it is to continue to exist.

Before considering why this is so, keep in mind the central claim that is being made, which I will refer to as the Responsibility for Vulnerability and Dependency (RVD) principle:

If one, through her voluntary actions (or omissions), is causally responsible for the vulnerability and dependency of a sentient animal, then one has a special moral obligation to assist that animal.

Now, consider a consistent application of the RVD principle to the abortion discussion: *If one, through her voluntary actions (or omissions), is causally responsible for the vulnerability and dependency of a sentient fetus, then one has a special moral obligation to assist that fetus*. The first thing to note about the RVD principle is that it assumes that individuals are morally responsible for their voluntary acts or omissions that cause sentient beings to be dependent and vulnerable. This brings us to a basic theory of moral responsibility, which informs us that agents are, at the very least, morally responsible for their voluntary acts (or omissions).[[23]](#footnote-23) Furthermore, according to Palmer’s account, which emphasizes the importance of causal relations, when a moral agent voluntarily performs (or fails to perform) a morally significant act, she is not only morally responsible for the act, but she is also responsible for the causal effects of the act, such as the relationship of dependency and vulnerability that is established through the act. This then raises the following question: under what conditions, if any, does a woman voluntarily create a relationship of dependency and vulnerability with a sentient fetus?

While standard anti-abortionists (Carrier 1975; Beckwith 1992; Hall 2004) often argue that a woman is responsible for the dependency and vulnerability of a fetus when she becomes pregnant as a result of her voluntary choice to engage in sexual intercourse, the sentience-based rights account is not concerned with the origin of the pregnancy. It is not the mere creation of dependent beings that is of moral importance in this discussion; rather, the only relationship that is of actual moral significance is the relation moral agents establish with beings who have moral status: sentient beings. Yet, fetuses younger than eight weeks gestation are not sentient, so even if a woman, by voluntarily engaging in sexual intercourse, is responsible for causing the existence of a dependent fetus, there is no moral obligation for the woman to assist the fetus in the first eight weeks of pregnancy since, at this point, the fetus lacks moral status. A sentience-based rights position, then, is only concerned with the relationship of dependency and vulnerability that is established at the time the fetus acquires moral status: at eight weeks gestation. At eight weeks gestation, a morally relevant change occurs in fetal development: the emergence of sentience, so this is when the relation of dependency and vulnerability becomes of ethical concern. Thus, the morally significant act or omission is not sexual intercourse, but rather, the morally significant omission is the choice not to abort the fetus in the first eight weeks of pregnancy.[[24]](#footnote-24)

A woman who fails to take action to prevent an unwanted relationship from forming with the fetus within the first eight weeks of pregnancy can thus be said (in standard cases of pregnancy) to be morally responsible for choosing not to terminate the pregnancy because this omission causes the fetus, given it already exists, to need something of moral importance if it is to continue to exist: namely, rights and moral protection.[[25]](#footnote-25) Like the squirrel feeder, since the woman foresees that her omission will cause a sentient fetus to be dependent on her for moral protection, even if she does not intend this, she remains morally responsible for the relationship of vulnerability and dependency that is formed between her and the fetus.

We can conclude, then, that Palmer’s add-on theory of animal rights is committed to the following claim: a woman is morally responsible for creating a relationship of vulnerability and dependency with a sentient fetus, in standard cases of pregnancy, because she failed to perform a morally significant act, i.e., the termination of the pregnancy before the eighth week of gestation when she knows, or should have known, that she is pregnant. By failing to terminate the pregnancy before the fetus becomes sentient, she fails to take the necessary steps to prevent a morally significant relationship from forming with the fetus.[[26]](#footnote-26) It is this dependency that is caused by the woman’s voluntary omissions that can be said to: (1) give rise to a special right of the sentient fetus to use the woman’s body, and (2) generate the special duty to assist the sentient fetus, which the woman can fulfill only by allowing it to use her body.

While this approach does not imply that women should be legally punished for having an abortion post eight weeks, it does imply that, morally speaking, women should afford serious moral attention to the fetus, who will inevitably develop into a being with inherent value at eight weeks gestation. It furthermore beseeches women who seek abortions to exercise a high standard of responsibility and to destroy an unwanted fetus before it becomes sentient. This is a significant improvement to the liberal defense of abortion, like Adams’ (1991) account of abortion, which seems to discount a morally salient consideration: even if a woman has the right to bodily integrity, it seems morally problematic to maintain that killing a fetus at any stage for any reason is morally justified (and furthermore, that all abortions are equally justified). If a sentient fetus has moral status, surely this fact should have some normative force in the abortion discussion.

**7 Conclusion**

An animal rights ethic, like Francione’s, needs to consider the fetus if it is to remain morally consistent. By applying his own animal rights principles to the abortion discussion, we can conclude, without controversy, that an animal rights position must grant that a sentient fetus has a prima facie right to life. This is, in and of itself, morally significant. As Midgley (1983) points out, to say that a being does not have rights is to convey a simple message: that these beings do not matter. The notion of rights is ever so powerful, and to be able to extend this notion to a sentient fetus is a moral accomplishment. Furthermore, by supplementing Francione’s animal rights position with the fundamental principles of Palmer’s discussion concerning special duties to assist certain animals, we will find that a complete animal rights position is committed to the following claim: a woman, in standard cases of post-eight week pregnancies, acquires special obligations to assist a sentient fetus because she caused it to be dependent and vulnerable through her voluntary decision not to terminate the pregnancy prior to the eighth week of gestation. In addition, we can conclude that women, in standard cases of pregnancy, are behaving immorally when they have a post-eighth week abortion. Although this is not an argument that demands a restrictive legal abortion policy, this would still, as Jenni (1994, 59) puts it, demand a “recognition of the moral standing of sentient non-persons and a reminder that we may not just routinely ignore their interests; that they matter; that we should take them seriously.” Thus we can conclude that a fully developed animal rights theory, which stems from Francione’s account of animal rights, entails a broad set of ethical considerations that do have moral implications for the abortion discussion.

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1. For the sake of simplicity, I use the term “animal” to refer to nonhuman animals in this paper. In addition, I will use the term “fetus” to refer to all unborn human beings. While I recognize that an unborn human being does not become a fetus until the second trimester (U.S. National Library of Medicine 1997), in the standard abortion discussion, “fetus” is predominantly used as a blanket reference to all unborn humans. In keeping with the common language, I will do the same. [↑](#footnote-ref-1)
2. There are also a number of online articles that charge animal ethicists with being “antihuman.” These authors claim that animal ethicists care more about animals than humans. For instance, see the online essays by Eberstadt (2009), Smith (2012), and Mercier (2013). [↑](#footnote-ref-2)
3. It might be noted that Francione’s primary argument is legalistic in nature. Thus one might argue that Francione only makes the claim that the animal rights theory is not committed to a legal policy that outlaws abortion. However, his essay also indicates that he thinks that an animal rights theory does not have implications for even the moral discussion concerning abortion. As he puts it, “abortion, however, presents us with a completely unique moral issue” and “this feature of abortion makes it very different from the normal moral conflicts that we may try to resolve by recourse to moral theories concerning our treatment of animals” (Francione 1995, 154). [↑](#footnote-ref-3)
4. Note that there are a number of responses to Francione’s legal argument. See Callahan (1986), Jenni (1994), and Wolf-Devine (1989), who argue that a legal policy that is pro-choice is at odds with the feminist agenda. Specifically, they argue that, since abortion discounts the interests of oppressed groups (i.e., fetuses), abortion is a patriarchal response to unwanted pregnancies. [↑](#footnote-ref-4)
5. While a relational account would also imply that a man has positive duties to assist both his child and also a woman he impregnates, for the purpose of this paper, I focus only on women, since I am concerned specifically with the duty to assist a sentient fetus by keeping it alive during pregnancy. Since the decision to terminate or continue the pregnancy is ultimately the woman’s decision, the relationship of dependency that I am concerned with in this discussion is ultimately a result of the woman’s act (or omission). This will become clear later on in the discussion. [↑](#footnote-ref-5)
6. Hursthouse (1987, 1991) avoids the discussion concerning the ontological status of the fetus and instead evaluates the permissibility of abortion on a case by case analysis through an appeal to the virtues.

7 Note that Regan (1983, 2001) argues that the criterion of moral status is being an experiencing “subject-of-a-life,” which involves the possession of higher cognitive faculties beyond mere sentience. Although his account of animal rights is arguably one of the most influential animal rights theories, he stands as a minority in embracing a seemingly demanding account of moral status, which many animals do not satisfy. [↑](#footnote-ref-6)
7. Note that some ethicists might also hold that non-sentient beings, such as great works of art or natural objects like the Grand Canyon, might have aesthetic value or other kinds of worth (Rollin 1981, 140). [↑](#footnote-ref-7)
8. Granting special moral consideration to humans simply because they are members of the species Homo sapiens is referred to as speciesism (See Francione 2000, xxviii-xxix). A common justification for valuing the human species over animals is the claim that human beings are rational, while animals are not. Such a defense is rejected in respect to the obvious fact that not all human beings are rational; infants and the severely mentally disabled are examples of human beings who are not rational. Human beings, then, are entitled to moral consideration not because they are “rational,” but because they have the capacity to experience pain and suffering. It is then concluded that there is no morally relevant difference between humans and animals, since animals also have the capacity to experience pain and suffering. [↑](#footnote-ref-8)
9. In his article on animal rights and abortion, Francione (1995) spends considerable time demonstrating how neither Regan’s (1983) nor Singer’s (1975) account of animal ethics entails an anti-abortion position, yet he does not consider that his own theory might be used to draw moral conclusions regarding abortion. [↑](#footnote-ref-9)
10. Warren (1987, 1997, 2001) also puts forth a version of a “sentience based rights position.” However, Warren presents a “sliding scale of moral status,” which maintains that there are varying degrees of moral status depending on an individual’s capacities. According to this view, a fully developed person has greater moral standing than an animal or fetus. The view I am concerned with is one that presents an egalitarian view of moral status, like Francione or Regan’s, which maintains that moral status does not come in degrees. [↑](#footnote-ref-10)
11. This notion of prima facie rights stems from Ross’ (1930) discussion of prima facie duties, which he describes as obligations we have other-things-equal, unless they are overridden or trumped by another duty. A prima facie duty has at least one right-making feature, but that feature does not entail that it is an absolute duty: a duty that must always be performed and can never be overridden. While not all prima facie duties correspond to a rights claim, according to rights theorists, certain duties, such as negative duties of noninterference, have a correlative rights claim. So, if there is a prima facie duty not to harm individuals with inherent value, there is a corresponding prima facie right such as the right not to be harmed. Yet, if the duty to not harm others can be overridden, it follows that the prima facie right can also be overridden. [↑](#footnote-ref-11)
12. Other recent research considers that consciousness might emerge somewhere around the 16th week of gestation (see Lee et al. 2005; Mellor et al. 2005; Van de Velde et al. 2006; Derbyshire 2006). [↑](#footnote-ref-12)
13. Important to keep in mind is that whether cortical structures are even necessary for consciousness has been the subject of doubt in recent discussions (see Derbyshire 2010; Anand 2007; Merker 2007). Merker argues that there is evidence that children born without a cortex are conscious, which suggests that brain activity that occurs outside of the cortex might give rise to consciousness. [↑](#footnote-ref-13)
14. Rose (2002) does acknowledge that fish react to noxious stimuli; however, he claims that this is nociception without conscious awareness of pain. [↑](#footnote-ref-14)
15. While one might admit that it makes sense to attribute sentience to a cephalopod because its nervous system is complex and developed, it might be argued that the nervous system of a young fetus is underdeveloped, and thus attributing sentience to a young fetus remains problematic. Yet, an important point remains: animal ethicists like Francione admit that consciousness can be carried on nervous systems which are different from that of fully developed humans. [↑](#footnote-ref-15)
16. Note that Rose (2002) makes a similar argument about fish. Rose argues that, while most fish have nociceptors (pain receptors), fish do not have the neurological hardwire required for consciousness. Thus he concludes that, although fish can undergo an unconscious process referred to as nociception, they cannot actually experience pain. Also note that fetuses start forming pain receptors (nociceptors) at eight weeks, thus the basic neurological structures of an eight week year old fetus will look very similar, if not more complex, than that of a fish (Anand 1987). [↑](#footnote-ref-16)
17. Erring on the side of caution might pose a problem when resources are scarce or in cases of a conflict between rights when erring on the side of caution might mean that a genuine right is overridden for the sake of a possible right. So, in the case of crustaceans, it is unproblematic to err on the side of caution in order to grant them rights since the possible rights of these beings are not in direct conflict with the genuine rights of a person. However, if we are to err on the side of caution in the case of an eight week year old fetus, this becomes problematic because, in cases of unwanted pregnancy, the possible rights of the fetus would be in direct conflict with a woman’s genuine rights. Yet, like Moller (2011), I argue that the moral risk should be taken seriously and furthermore should make some difference in our moral decision making. In addition, I will later argue that, in the abortion discussion, the conflict of rights between the fetus and the woman does not emerge until the eighth week gestation, providing a woman with an eight week window to terminate an unwanted pregnancy, thereby allowing her to avoid a possible scenario where she might be forced to balance her genuine rights against the possible rights of a fetus. Thus, in this discussion, erring on the side of caution does not require the woman to forfeit her genuine right. Rather, erring on the side of caution, in this discussion, requires a woman who is pregnant with an unwanted fetus to exercise a significantly high standard of responsibility and to seek an early abortion. [↑](#footnote-ref-17)
18. It might be argued that “erring on the side of caution” entails absurd conclusions such as the following: plants should be treated as sentient since they often exhibit pain behavior, such as “screaming” when cut. Yet, plants lack any neurological or physiological structures that are associated with sentience. Furthermore, there is no scientific evidence that plants have any sort of mental life. Thus, when erring on the side of caution, the evidence we accept for sentience should be more than just pain behavior or reactions to external stimuli. The pain behavior must be accompanied by some (perhaps underdeveloped) neurological or physiological structure. [↑](#footnote-ref-18)
19. Even if the arguments from caution and similarity are rejected in regard to granting a right to life to a fetus of eight weeks gestation, there is substantial evidence and widespread consensus in the scientific community that mid-second trimester fetuses are certainly conscious, and thus these fetuses must be said to have a right to life according to Francione’s animal rights theory. Although fewer abortions occur this late into pregnancy, they still merit our moral attention. Thus, the following discussion still remains morally important, even if a fetus cannot be said to acquire a right to life until the mid-second trimester. [↑](#footnote-ref-19)
20. Certain anti-abortion positions allow for exceptions, such as when the life of the woman is at risk. For example, see Noonan (1970). [↑](#footnote-ref-20)
21. Although the abortion discussion has advanced since Thomson’s (1971) seminal paper, I do not survey the recent literature in abortion because the goal of this article is to consider the viability of using an animal ethic to draw a morally consistent conclusion regarding abortion. This can be done by focusing exclusively on Thomson’s article regarding when a woman ought to assist a fetus. [↑](#footnote-ref-21)
22. A variation of this distinction comes from Silverstein (1987) and Boonin (2003, 169), who point to two different senses in which one could be said to be responsible for the fact that someone now stands in need of assistance. [↑](#footnote-ref-22)
23. Note that although Palmer focuses on actions more so than omissions, her account seems to imply that moral agents are responsible for omissions. For instance, animal ethicists typically claim that one who omits to spay her cat would be responsible for the kittens who come into existence if the cat were to become pregnant [↑](#footnote-ref-23)
24. One might argue that not all women have the resources and means of visiting an abortion clinic within the first eight weeks of gestation. However, this account would demand that a woman be assisted in getting an abortion within the first eight weeks of her pregnancy. For example, health care providers should readily offer abortions for women in their first eight weeks gestation, and abortion services for women in their first eight weeks of pregnancy should be provided as part of routine health care. If a woman desires to get an abortion, yet does not have the means to in the first eight weeks of pregnancy, it might be argued that the omission is involuntary, and thus the woman is not morally responsible for the relationship she has with the sentient fetus. [↑](#footnote-ref-24)
25. By standard cases of pregnancy, I mean cases where a woman knows, or should have known, that she is pregnant. This suggests that women who are significantly cognitively impaired, as well as many minors, might be too naïve to know that they are pregnant prior to eight weeks gestation. These women, then, are not morally responsible for the relationship with the sentient fetus. [↑](#footnote-ref-25)
26. One might question whether a woman commits a moral wrong by aborting an unwanted fetus in a situation in which she does not become aware that she is pregnant until after eight weeks gestation. Answering this question requires an inquiry into the specific details surrounding the agent’s ignorance and an in-depth discussion about culpable ignorance which, due to space constraints, this article cannot sufficiently address. Since the goal of this article is to illustrate that the animal rights position has greater implications for abortion than Francione admits, it is not necessary that I address every pregnancy scenario. Thus, I will not attempt to distinguish between cases where a woman is responsible for her ignorance and when she is not culpable for her ignorance, but I will assume that not every instance of ignorance constitutes an excuse and that there are cases where a woman should have known that she was pregnant and thus is responsible for the relationship that develops with the fetus after eight weeks. Under what conditions we can blame an agent for her ignorance is the subject of discussion in Rosen (2003), Zimmerman (1997), Harman (2011), Smith (1983), and Guerrero (2007). [↑](#footnote-ref-26)